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ABSTRACT

A summary of California's regulations governing community college academic senates is provided, beginning with the 1963 resolution calling for an academic senate at each junior college to represent faculty in the formation of policy on academic and professional matters. The activities of the Junior College Bureau, the State Board of Education, the Junior College Advisory Council, and the State Legislature relevant to academic senates are summarized. The ramifications of the Winton Act are discussed. The relevant resolutions and regulations are quoted. (KM)

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FACULTY ASSOCIATION OF THE CALIFORNIA COMMUNITY COLLEGES, INC.

ED 076183

# Rights and Responsibilities

# of

# California Community College Academic Senates

## An Historical and Legal Analysis

October 14, 1971

The rights and responsibilities of Community College Academic Senates seem continually to be the subject of questions and opinions. Any comprehensive attempt to put all such to rest is no doubt doomed to failure. This paper will instead attempt to be a summary of the historical development of the existing regulations in the hope that it may be of some use as a resource document, where relevant, to those attempting to answer such questions, weigh the validity of such opinions or come to their own conclusions.

UNIVERSITY OF CALIF.
LOS ANGELES

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Organizations variously described as Academic Senates, Faculty Councils, or similar title, existed in many if not most community college campuses prior to 1963. The right of faculties to form them, and where they existed, to continue them, and their legal status, autonomy and freedom from administrative domination was a matter of continuing concern. Therefore, in the 1963 Legislative Session, Assemblyman Charles Garrigus, himself a community college teacher, authored Assembly Concurrent Resolution No. 48 which provided in its operative provision:

> "...Resolved by the Assembly of the State of California, the Senate thereof concurring, That the State Board of Education is hereby requested to provide for the establishment at each junior college of an academic senate or council wherein the faculty members shall be freely selected by their colleagues for the purpose of representing them in the formation of policy on academic and professional matters at such junior colleges;..."

(ACR: Res. Ch. 108, Stats, 1963)

Thereafter, the Junior College Bureau of the State Dept. of Education, after solicitation of suggestions from "the field" and receipt of proposals from numerous interested organizations, prepared drafts and revised drafts of proposed regulations for the State Board of Education's consideration. The final draft prepared by the Junior College Bureau of the State Board of Education was identical to that adopted by the Board with one important exception. The draft provided that the purpose of the Academic Senate was:

> "...make recommendations...(to the administration and the governing board)...with respect to academic and professional matters except those matters set forth in the then Government Code, Section 3500-3509."

These sections dealt with the right of employee organizations (on a non-exclusive basis) to represent their members on:

> "...all matters relating to employment conditions and employer--employee relations, including but not limited to, wages, hours and other terms and conditions of employment."
>
> Gov. Code Sec. 3504 (1963)

On September 10, 1964, this draft of proposed Administrative Code, Sec. 131.6 was presented to the Junior College Sub-Committee of the State Board of Education by Dr. Paul Laurence. Mr. Donald Fitzgerald, then President of CJCFA (FACCC), William P. Smith, Jr., their legislative advocate and Mr. William Plosser, at that time, the representative of C.F.T., made presentations to the committee opposing such a limitation on the definition of Academic and Professional matters, generally on the basis that no such distinctions or lines could reasonably be drawn; that Academic and Professional matters, both historically and practically would necessarily affect wages, hours and terms of employment in many, if not most, instances.

In a statement to the sub-committee, Mr. Fitzgerald pointed out that such a denial would render Academic Senates little more than curriculum committees. He further said that all employee organizations which had submitted detailed proposals for Academic Senates envisioned some responsibilities in the areas of budgets, salaries, and working conditions. Board member William Morris agreed and moved that references to the Government Code be stricken from the draft. This was done.

The following day, September 11, 1964, the State Board of Education adopted the draft as amended by their Sub-committee and it became Title 5, Section 131.6 of the California Administrative Code, (filed 9-14-64, Register 64, No. 19).

The provisions of Section 131.6 were identical to those that now exist, (the result of renumbering), as the present Sec. 53200 et seq. of Title 5, except that sub-paragraphs (c) and (d) read as follows:

> "(c) The academic senate or faculty council shall present its written views and recommendations to the governing board through regularly established channels. However, the senate or council, after consultation with the administration, may present its views and recommendations directly to the governing board."
>
> "(d) The governing board shall consider such views and recommendations. It may entertain oral presentations thereof by the senate or council at any board meeting."

Thereafter, a bulletin from the Bureau of Junior College Education addressed to Junior College superintendents and presidents, dated September 18, 1964, stated.

> "Several comments may be helpful in interpreting the new section (131.6) that will be added to the California Administrative Code, Title 5, Education...It provides that only full-time certificated employees who are not required to hold an administrative or supervisory credential for their services shall vote whether or

not a senate or council is desired and what 'the composition, structure, and procedures' of it shall be, but the membership may include any employee of the college whom the faculty (as defined) may designate." (Underlining added for emphasis.)

The "Winton Act" (Education Code sections 13080 et seq) was adopted by the California State Legislature in 1965. Between 1961 and 1965, school district employer-employee relations as they related to employee organizations and rights of individual employees to participate, or not therein, were governed by the provisions of the Public Employee Organizations Law at Sections 3500 et seq Government Code previously referred to. (This act has been known since 1968 as the, "Meyers-Milias-Brown Act", at which time extensive changes were made therein.)

Contrary to some popular belief, it was not the enactment of the "Winton Act" which first mandated that public employers "meet and confer" with representatives of employee organizations. The Government Code since 1961 had provided that:

"The governing body of a public agency, or such boards, commissions, administrative officers or other representatives as may be properly designated by law or by such governing body, shall meet and confer with representatives of employee organizations upon request and shall consider as fully as it deems reasonable such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action."

(Underlining added for emphasis.)

Government Code, Section 3505 (1961)

The "Winton Act" amended public school districts out of the Government Code provisions and created the special provisions for employee organizations of public school employees in the Education Code, sections 13080 et seq. At the time it was first enacted, the "Winton Act" differed from the existing Government Code provisions (supra) principally in providing for a more detailed listing of the subject of "meet and confer", i.e.:

> "...shall meet and confer with representatives of employee organizations upon request with regard to all matters relating to employment conditions and employer-employee relations, and in addition, shall meet and confer with representatives of employee organizations representing certificated employees upon request with regard to all matters relating to the definition of educational objectives, the determination of the content of courses and curricula, the selection of textbooks, and other aspects of the instructional program to the extent such matters are within the discretion of the public school employer or governing board under the law."
>
> Ed. Code, Sec 13085, (1965), (since amended).

and in providing for a "negotiating council" to collectively exercise the rights of employee organizations set forth therein where more than one employee organization requested recognition, through a scheme of proportional representation, (Education Code, Sec. 13085 (1965). All other provisions were substantially the same as the then existing Government Code sections on the subject.

Thereafter, in 1966, the C.J.C.F.A. (now FACCC) through its president requested the State Board of Education to consider certain questions that had arisen in the operation of Academic Senates under the regulations, with a view to clarification and strengthening. One was the problem of the authority for multi-campus Acacemic Senates, another the problem of released time, and the third, the problem of their relationship to the rights of

employee organizations under the "Winton Act", including the overlap of their respective areas of representation as to subject matter.

The State Board of Education referred the matter to its newly created Junior College Advisory Panel, which held hearings thereon from February through May of 1967. CJCA, CSBA, CFT, CTA, CJCFA and interested individuals presented positions and opinions. The result was certain recommendations to the State Board of Education, all of which were adopted. Section 131.6 of the Administrative Code was amended by modifying sub-paragraphs (c) and (d) and adding a new sub-paragraph (e) as follows:

> "(c) After consultation with the administration, the academic senate or faculty council may present its written views and recommendations to the governing board. The governing board shall consider and respond to such views and recommendations."
>
> "(d) Upon the request of the academic senate or faculty council and subject to Government Code Sections 54950 ff. (the Brown Act), when applicable, the governing board, or such board members or administrative officers as it may designate, shall meet and confer with representatives of the academic senate or faculty council with respect to recommendations made or proposed to be made by the senate or council. The designation of board members or administrative officers as provided herein shall not preclude the representatives of an academic senate or a faculty council from meeting with, or appearing before, the governing board with respect to the views, recommendations, or proposals of the senate or council at a regular or special meeting of the board."
>
> "(e) The academic senates or faculty councils may assume such responsibilities and perform such functions as may be requested of it by the administration or board of trustees."
>
> Cf: the language of 131.6 (c) and (d), page 3 herein.

The State Board of Education also received and adopted from the Junior College Advisory Panel a resolution, the content of which does not appear in Title V regulations, but which does

appear as an adopted item in the record of minutes of it's December 1967 board meeting. It includes among it's whereas paragraphs the following:

> "WHEREAS, the academic senates or faculty councils established as heretofore noted are clearly not "employee organizations' as defined in the Education Code, Sections 13081 (a) and 13082 and elsewhere in California Statue law and administrative regulation, and..."
>
> State Board of Education
> Minutes, December, 1967

and in it's operative provisions the following:

> "1. It is the view of the State Board of Education that the organization of district-wide academic senates or faculty councils in multi-campus districts is entirely legal and within the intent of the Administrative Code, Title 5, Section 131.6."
>
> "2. Legal complexities may prevent direct access by academic senates or faculty councils to county counsel opinions. However, to make responsible recommendations to their local boards of trustees, senates or councils may occasionally need county counsel opinions. The State Board of Education encourages local boards of trustees to request of county counsels the legal advice required for such responsible recommendations."
>
> "3. It is the view of the State Board of Education that the conduct of academic senate business as a regular part of the operation of the junior college is entirely appropriate and that the extent of staff time and effort assigned this function is clearly a matter for determination by the local board of trustees."
>
> State Bd. of Ed. Min., Dec., 1967.

Unfortunately, the Junior College Bureau, to the best of my knowledge, never circulated to the college community, the fact of this resolutions adoption.

The Board of Governors of California Community Colleges adopted all the existing provisions of Title V, Administrative Code, including Section 131.6 by a "blanket" resolution, as follows:

"...that the Board of Governors of the California Community Colleges hereby adopts provisions of California Administrative Code, Title 5, pertaining to Junior Colleges for its use and guidance in exercising its powers, duties, responsibilities, and jurisdiction with respect to the governance of California public junior colleges."

Resolution adopted by Board of Governors of California Community Colleges, July 25, 1968.

Interestingly, the CTA, whose attorneys drafted the framework of the "Winton Act", and who as an organization, was the sponsor of the legislation, was aware of the overlap of responsibilities, and supported the interpretation that such overlap existed. Dr. George S. Starrett, their field representative, testified to the Junior College Advisory Panel Considering the problems referred to, on April 1, 1967, as follows:

"First, I would like to state the official position of CTA, Junior College Council. This is the body in CTA which is made up of junior college people, representatives who are elected on each campus and hence are considered a well representative body of the 6000 members in junior colleges. A great deal of time has been spent on these discussions. Here is their official position:

'WHEREAS, the Winton Act does not void the legal authority designated to academic senates, and

'WHEREAS, the Winton Act provides individuals a freedom of choice of who shall represent them in employee-employer relations, and

'WHEREAS, the Winton Act guarantees legal rights not provided for in other legislation, and

'WHEREAS, under the Winton Act the membership of employee organizations may select those persons they consider best qualified to negotiate, therefore be it

'RESOLVED, that the California Teachers Association, Junior College Council, recommends that CTA members in junior colleges actively participate in academic senates and exercise their rights under the Winton Act in whatever pattern is most appropriate and effective in their districts.'"

Minutes supra, pg. 52-53

and further:

> "...The second reason, we believe it provides a viable alternative with traditional administrative structure and, obviously, had to exist in all junior colleges. The academic senate provided viable alternatives to this structure. We realized there would be overlapping and there was great deal of discussion prior to ACR 48 and immediately following by voluntary organizations, if we want the academic senate route we would put ourselves out of business. We had a committee of 100 faculty representatives from the state. We think it is good and we have great hope for the academic senate. We think it will establish itself and will become an effective body..."
>
> Minutes supra, pg. 52-53.

and also:

> "...Both the academic senates and the Winton Act can operate concurrently and should. They are generally working today with some exceptions. Both of them need to be strengthened. We know that they are legally compatible. The Winton Act does not deny any legal rights to academic senates. Before we approved the wording I was still doubtful and took it to two other legal firms other than our legal staff. I wanted to be darn sure we didn't emasculate the academic senates. We say and we deeply feel that both can operate concurrently. The people can say when they join the organizations what they want through their organizations, and say whether they want to have negotiating councils or what they want to do. It gives freedom of choice and equal opportunity for every employee. It provides viable alternatives. It is possible for academic senates to exist on a campus and negotiating councils to exist. We have several examples of this; they do operate under existing law. Overlapping of functions is not a problem. If it does exist it is strength and not a weakness; a check and balance. There will be greater participation as the institutions grow in size..."
>
> Minutes supra, pg. 54

Others besides this author would agree. See for example the opinion of Thomas A. Shannon, Esq.:

> "The question which now arises is whether there actually is a conflict between the laws establishing a junior college 'academic senate' or 'faculty council' and a 'negotiating council' in a junior college district. To answer this question, let us look at several elements:

"(1) The 'academic senate' or 'faculty council' in a junior college is generally not considered an 'employee organization' and is not required to comply with the provisions of a school district's rules and regulations governing employer-employee relations which were adopted under the Winton Act.

"Section 13081, Education Code, defines 'Employee organization' as

> ...any organization which includes employees of a public school employer and which has as one of its primary purposes representing such employees in their relations with that public school employer.

"The 'academic senate' or 'faculty council' representation is generally restricted to the class of full-time non-administrative or supervisory certificated employees of the junior college as the 'faculty' and apparently does not contemplate that the 'academic senate' or 'faculty council' should represent 'employees' of the junior colleges in their employer-employee relations with the junior college district..."

(paragraph (2) is deleted from the quote because the distinction as to "meet and confer" therein referred to, no longer exists as a result of the amendment of 1967 referred to supra).

"(3) The 'academic senate' or 'faculty senate' is empowered to present its views, findings, and recommendations on 'academic and professional matters'. If this is a limitation, it probably is only a technical limitation because the words 'academic and professional' reasonably could be interpreted so broadly as to encompass virtually any general issue affecting the operation of the junior college or the efficiency of its teaching staff."

"(4) Section 13080, Education Code, which sets forth the 'purpose clause' of the Winton Act, clearly states that

> '...nothing contained herein shall be deemed to supersede other provisions of this code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other means of administering employer-employee relations.'
>
> 'This article is intended, instead, to strengthen tenure, merit, civil service, and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees and the public school employers by which they are employed.' (Emphasis add.)

"It reasonably could be said that because Assembly Concurrent Resolution No. 48 of the 1963 Regular Session of the California Legislature and Section 131.6, TITLE 5, Administrative Code, were in existence and effect at the time of the passage of the Winton Act, the legislature did not intend to quash them and they could be considered as one of the

> ...other methods of administering employer-employee relations...

"which were not intended to be superseded by the Winton Act. This argument is further buttressed by the fact that no action has been taken either by the Legislature, the State Board of Education between 1965-68, or the Board of Governors of the California Community College since 1968 to repeal the legal basis for the establishment of a junior college 'academic senate." Moreover, it should be observed that Section 13080, Education Code, above, does not speak in terms of a single or exclusive method of communication but rather merely in terms of:

> **uniform and orderly methods of communication between employees and the public school employers by which they are employed.**

"It is questionable whether this language would serve to cancel pre-existing provisions now in force as a policy of the Board of Governors of the California Community Colleges for facilitating communication between the faculty of a junior college and its parent junior college district.

"(5) Assembly Concurrent Resolution No. 48 of the 1963 Regular Session of the California Legislature eloquently expresses the intent of the Legislature that the faculty of California junior colleges should have the same right to form 'academic senates' as is enjoyed by the faculties of the University of California and the California State Colleges because the junior colleges are considered part of higher education by the California Master Plan for Higher Education. Both senates and teacher organizations and unions coexist at the university and state college levels.

"In conclusion, it would seem reasonable to say that the legal basis of the junior college 'academic senate' is not necessarily inconsistent or in conflict with the legal basis of the 'negotiating council'. Of course, this does not mean that the 'negotiating council' is precluded from 'meeting and conferring' on those subjects which appear to be 'academic' and 'professional' involving junior colleges; the 'academic senate' clearly does not have exclusive jurisdiction over 'academic' and

'professional' junior college matters. Under the view that there is no conflict or inconsistency in the legal bases of the 'negotiating council' and the 'academic senate', both the negotiating council and the senate could coexist and any practical problems of overlapping or shared jurisdiction which might arise could be resolved during their presentation to the administration, a junior college district Board of Governors' representative, or the governing board of the junior college district itself."

See "Working With the Faculty in the Community College", an address by Thomas A. Shannon, Schools Attorney of San Diego Unified and Junior College Districts and Legal Counsel, California Association of School Administrators, at the 1969 Joint Annual Conference of the Calif. School Boards Association and the California Association of School Administrators, San Francisco.

At the time the State Department of Education was working on the draft for the initial regulations and prior to their adoption by the Board, questions were raised about the Board's statutory authority to act in mandating Academic Senates for the local districts. The result of a letter from the Superintendent of Public Instruction to the Attorney General for clarification on the point, (April 23, 1964), the Attorney General issued an opinion, (64-153, July 1964, reported in 44 Ops. Cal. Atty. Gen. 6), wherein the Attorney General indicated they had the authority citing their general powers set forth in Ed. Code Section 152 and as applied to Junior Colleges by Sec. 22650. As a caveats therein, the Attorney General indicated he believed it was unclear to what extent the senates or councils contemplated by ACR No. 48 would constitute employee organizations within the meaning of Government Code Sections 3500 to 3509, and indicated that legislative clarification would be desirable.

This was before the form of the regulations were adopted by the Board, and also before the provisions of the Government

Code as to the rights of employee organizations was amended so as not to apply to school districts and their rights established in the Education Code in the slightly different format of the "Winton Act" (1965).

This Attorney General's opinion is sometimes erroneously cited as authority that the kind of association created by the Academic Senate regulations is, or may be an "employee organization" as defined in the "Winton Act", or for that matter, in the Meyers-Milias-Brown Act, (the predecessor of which, the Attorney General was referring to). The question was raised by the Attorney General as to the legislature's intent as to what the State Board of Education was directed by resolution to create, not after the fact, as to what the State Board ultimately did create. The regulations create an organization which is generally accepted as not meeting the criteria of an employee organization as defined in the "Winton Act". (See statements of Thomas Shannon, Esq., supra page 10 and action of State Board of Education, supra pg. 7).

The result of constant concern from the field as to relationships of Academic Senates to employee organizations exercising their "meet and confer" rights under the "Winton Act", FACCC sponsored the introduction of legislation for a period of several years.

In 1968, AB 1165 (Cory) was introduced which would have amended the "Winton Act" to clarify the rights of the Academic Senate. It was worded substantially the same as the amendment on this matter accomplished in 1970. The bill passed the Assembly but failed in the Senate Education Committee. The following year, Senator Rodda carried a bill with this amendment which passed both houses and was vetoed by the Governor. In 1970, Senator Rodda incorporated the proposal in his bill SB 293 (1970), containing other and substantial amendments to the "Winton Act". Assemblyman Russell carried the other major

"Winton Act" bill, AB 820 (1970) and it was introduced without this amendment. The result of lengthy hearings and consideration, both bills ultimately passed, but not until the Russell version was amended to match Senator Rodda's on this point. Mr. Russell's bill was signed by the Governor and became Chapter law 1413.

AB 820 (1970) added the following paragraph to Section 13080 of the Education Code:

> "It is the further intention of the Legislature that nothing contained in this article shall be construed to restrict, limit, or prohibit the full exercise of the functions of any academic senate or faculty council established by a school district in a community college to represent the faculty in making recommendations to the administration and governing board of such school district with respect to district policies on academic and professional matters."

The Legislative Counsel stated in a written opinion to Senator James Mills of October 15, 1970, that:

> "The act amends Section 13080 to include a statement of the intent of the Legislature that the Winton Act not be construed to restrict or limit the exercise by an academic senate or faculty council of a community college of their functions relating to district policies on academic and professional matters."

The Los Angeles County Counsel in a written opinion on this point rendered to Dr. Richard Clowes, Nov. 21, 1970 said:

> "The clear meaning of the amendment to Education Code Section 13080 by AB 820 is that the Winton Act provisions, when fully applied, shall in no way restrict, limit or prohibit the full exercise of the functions of any academic senate or faculty council established in accordance with the provisions of the California Administrative Code...
>
> It is not to be inferred from this amendment that the public school employer may meet and confer with representatives of a community college academic senate or faculty council <u>in lieu of</u> representatives of the employee organization or council representing certificated employees.
>
> This amendment in no way alters this office's position as expressed in our opinion to Dr. Phillip Putnam, president of Rio Hondo Junior College, dated October 5, 1965. In that opinion we concluded that an academic senate or faculty council is not an employee organization under the Winton Act.

> Such a senate or council neither has the liabilities nor enjoys the rights of an employee organization under the Act. The senate or council is not entitled to representation on the certificated employee council but it is not required to exercise its rights through the council.
>
> (Underline added by editor for emphasis)

The testimony of the representatives of FACCC and of ASCCC in support of this amendment, and of FACCC representatives for the previous bills containing the amendment was entirely on the fact of the historical overlapping of the areas of concern and the need to clarify the intent so that the employee organizations not be construed to be the sole vehicle for representation in these areas. The legislators must be assumed to have been well aware of the problem and used the words in their plain meaning.

The Los Angeles County Counsel's opinion (supra) at a later point attempts to make a distinction between academic and professional matters and wages and working conditions. We submit it is not supported by the historical development of the Academic Senate regulations or the subsequent developments including the amendment to the "Winton Act" on the subject.

Interestingly, the same legislation, AB 820 (1970) made other amendments to the "Winton Act" concerning the rights of employee organizations to "meet and confer" which are in fact as to subject matter somewhat more restrictive than those of the Academic Senate: See the following:

> "...shall meet and confer with representatives of certificated and classified (3) employee organizations upon request with regard to all matters relating to employment conditions and employer-employee relations, and in addition, shall meet and confer with representatives of employee organizations representing certificated employees upon request with regard to procedures (4) relating to the definition of educational objectives, the determination of the content of courses and curricula, the selection of textbooks, and other aspects of the instructional program to the extent such matters are within the discretion of the public school employer or governing board under the law."



Ed. Code, Sec. 13085 (as amended 1970) (Underline added emphasis)

The Los Angeles County Counsel in his opinion referred to, (supra), makes the distinction by comparison, and we agree, that the Academic and Professional Matters referred to in the regulations to, "...include both procedural and substantive aspects of a college instructional program. (Underlines added for emphasis.)

On the other hand, the addition of procedures for resolution of "persistent disagreements" by a fact finding body has no present counterpart in the Academic Senate regulations.

EXHIBIT A

Assembly Concurrent Resolution No. 48 of the 1963 Regular Session of the California Legislature.

WHEREAS, It is traditional that faculty members in institutions of higher learning participate in policy formation on academic and professional matters at such institutions through academic senates and councils; and

WHEREAS, The master plan recognizes the junior colleges as an integral part of the system of higher education in California; and

WHEREAS, The trustees of the state colleges have established a statewide faculty senate thereby leaving the junior college system the only remaining member of the tripartite master plan for higher education in California without such a faculty organization; and

WHEREAS, Junior colleges are to be organized and administered as a separate and independent system of higher education under the State Board of Education; now, therefore, be it

RESOLVED by the Assembly of the State of California, the Senate thereof concurring, That the State Board of Education is hereby requested to provide for the establishment at each junior college of an academic senate or council wherein the faculty members shall be freely selected by their colleagues for the purpose of representing them in the formation of policy on academic and professional matters at such junior colleges; and be it further

RESOLVED, That the Chief Clerk of the Assembly transmit copies of this resolution to the State Board of Education and to the governing boards of each junior college district in California.

(See ACR: Res. Ch. 108, Stats, 1963)

EXHIBIT B



SUBCHAPTER 2. ACADEMIC SENATES

53200. Definitions. For the purpose of this subchapter:
(a) "Faculty" means those certificated persons who teach full time in a Community College or other full-time certificated persons who do not perform any services for the college that require an administrative or supervisory credential.
(b) "Academic senate" and "faculty council" mean an organization formed in accordance with the provisions of this subchapter whose primary function is, as the representative of the faculty, to make recommendations to the administration of a college and to the governing board of a district with respect to academic and professional matters.
Note: Authority cited for Chap. 1, Subchap. 2: Sections 193,197 and 22650, Education Code.
53201. Academic Senate or Faculty Council. In order that the faculty may have a formal and effective procedure for participating in the formation of district policies on academic and professional matters, an academic senate or faculty council may be established.
53202. Formation; Procedures; Membership. The following procedure shall be used to establish an academic senate or faculty council:
(a) The faculty of a Community College shall decide by secret ballot to have an academic senate or faculty council.
(b) The governing board of the district maintaining that Community College shall establish the academic senate or faculty council by authorizing the faculty to:
(1) Fix and amend by vote of the faculty the composition, structure, and procedures of the academic senate or faculty council.
(2) Select, in accordance with accepted democratic election procedures, the members of the academic senate or faculty council.
53203 Powers. After consultation with the administration of its Community College, the academic senate or faculty council may present its written views and recommendations to the governing board. The governing board shall consider and respond to such views and recommendations.
53204. "Meet and Confer." Upon the request of the academic senate or faculty council and subject to Chapter 9 (commencing with Sections 54950) of Part 1, Division 2, Title 5 of the Government Code relating to public meetings when applicable, the governing board or such board members or administrative officers as it may designate shall meet and confer with representatives of the academic senate or faculty council with respect to recommendations made or proposed to be made by the senate or council. The designation of board member or administrative officers as provided herein shall not preclude the representatives of an academic senate or a faculty council from meeting with, or appearing before, the governing board with respect to the views, recommendations, or proposals of the senate or council at a regular or special meeting of the board.
53205. Duties Assigned by Administration and Governing Board. An academic senate or faculty council may assume such responsibilities and perform such functions as may be requested of it by the administration of its Community College or the governing board of the district maintaining its Community College.

EXHIBIT C

The following comments about the intent and affect of the Winton Act by its author, Gordon Winton, do not have the force or effect of law, (e.g. as a Court decision), but they are of particular interest since they are made by the author, (who is also an attorney).

> "Some six years after the enactment of the WINTON ACT there are still numerous erroneous impressions concerning its application. We have been requested to use this medium (SELL) to express some thoughts concerning this (as the author of the bill--not as ACSA's Legislative Representative).
>
> The preamble of the WINTON ACT (Sec. 13080, Educ. Code) states in part, 'It is the purpose of this article... (to) provide a uniform basis for recognizing the right of public school employees to join organizations of their own choice and (to) be represented by such organizations...' It should be emphasized that the right of employees to join organizations of their choice and the right of such organizations to represent members are the fundamental premises of the WINTON ACT. In the definitions in the Act an employee organizations is defined in part as (Sec. 13081 (a) one 'which has as one of its primary purposes (emphasis added) representing such employees (its members in their relations with... (the) public school employer.'
>
> It would seem to be evident that it was not the intent, nor is it within the language of the WINTON ACT, to provide that an employee organization or the certificated employees council (composed of representatives of employee organizations) might represent interests of employees who are not members of that or those organizations. It also seems apparent that an administrators organization within a district which does not have as one of its 'primary purposes' representing its members in their relations with the district would not come within the definition of an 'employee organization' and we think would not be governed by the WINTON ACT. This implies, in our opinion, that such an organization or representative thereof could discuss salary arrangements with the superintendent or the board without violating either the spirit or the letter of the law."
>
> (See Sacramento Education Legislative Letter, Nov. 1, 1971 by Gordon H. Winton)